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## LIFE INSURANCE—SUICIDE AND EXECUTION FOR CRIME

In the December number of the *YALE LAW JOURNAL*,<sup>1</sup> I find a very interesting discussion, involving an important question which has evoked a variety of judicial opinion in this country and in England. The question may be thus stated: What effect is produced upon the policy of life insurance by the suicide of the insured, or by his legal execution, in those cases where the policy has been taken out in good faith, and where suicide and execution are not expressly named in the policy as exceptions to the insurer's liability?

I agree with the *YALE LAW JOURNAL* that suicide and execution for murder, in this connection, may conveniently be put upon the same plane, and also that, in pursuing our investigation, we must take into account two different kinds of policies. Of these, the one class includes cases where the insured, who has taken out the policy and who pays the premiums, is also designated in the policy as beneficiary. The payee clause of such a policy usually states that the insurance money is payable to the insured, "his executors, administrators or assigns". This kind of insurance is the property of the insured, subject to claims of his creditors, subject to his own power of disposal except as limited by law or by the contract itself, and, if undisposed of by the insured, the proceeds of the insurance, upon his death, become a part of his estate as truly as any other kind of property which he may own at the time of his decease.<sup>2</sup>

The other class includes those many cases where, as beneficiary in the policy, appears the designation of some third person or persons, usually wife or children or both, and where, either by rule of law or by provision of the contract, this appointment of beneficiary, so far as the insured is concerned, is final and irrevocable.

Here we have a very different situation from that presented in connection with the policies first described. Here, though he may be entitled to retain possession of the instrument, the policy cannot fairly be said to belong to the insured. Its valid continuance, indeed, may depend upon the continued payment of pre-

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<sup>1</sup> 22 *YALE LAW JOURNAL*, pp. 158-162, citing the author's treatise on Insurance.—Ed.

<sup>2</sup> *Central Nat. Bank v. Hume* (1888), 128 U. S., 195, 9 Sup. Ct. 41, 32 L. Ed., 370.

miums by him and upon the continued observance on his part of certain express warranties, or conditions, prescribed in the policy, but all the beneficial interest in the contract, on the side of the insured, has been transferred finally and forever, either gratuitously or for a valuable consideration, to another or to others. The policy is no longer subject to claims of future creditors of the insured, nor subject to his power of disposal. Upon his death it will constitute no part of his estate. His executors or administrators will have no authority to inventory it, nor will they be able to collect its proceeds. In short, to employ the usual phraseology applicable to such a policy, the rights of the third party beneficiary are said to be "vested" from the very moment of the issuance of the policy.<sup>3</sup>

With full consent of the insurance company, the contract of insurance, from its very inception, is, in a sense, a contract made between the company and the beneficiary; the insured, in a measure, is a stranger to the contract, and if, at any time, the beneficiary wilfully causes the death of the insured, the beneficiary will forfeit all his right under the policy.<sup>4</sup>

With respect to our first named class of policies, many Courts, in accordance with the cardinal doctrine that insurance is a contract of highest good faith, maintain that, though the policy be silent on the subject, the interest of the insured must be held forfeited, if it appear that, either intentionally or by felonious act, he has hastened the event insured against, to wit, his own death.<sup>5</sup>

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<sup>3</sup> *Central Nat. Bank v. Hume* (1888), 128 U. S., 195, 9 Sup. Ct. 41, 32 L. Ed. 370; *Pingrey v. Nat. Life Ins. Co.* (1887), 144 Mass., 374, 11 N. E., 562; *Shipman v. Protected Home Circle* (1903), 174 N. Y., 398, 407, 67 N. E. 83, 63 L. R. A., 347; in which the Court says, "his rights when once thus vested cannot be defeated by the subsequent acts of the assured."

<sup>4</sup> *New York Mut. Life Ins. Co. v. Armstrong* (1886), 117 U. S., 591, 6 Sup. Ct. 881, 29 L. Ed., 997; *Supreme Lodge v. Menkhause* (1904), 209 Ill., 277, 70 N. E., 567, 65 L. R. A., 508, 101 Am. St. R., 239; *Schmidt v. Life Assn.* (1900), 112 Iowa, 41, 83 N. W., 800, 51 L. R. A., 141, 84 Am. St. R., 323; *Filmore v. Met. Life Ins. Co.* (1910), 82 Ohio St., 208, 92 N. E., 26; *Cleaver v. Reserve Life Assn.* (1892), 1 Q. B., 147.

<sup>5</sup> *Northwestern Mut. L. Ins. Co. v. McCue* (1911), 223 U. S., 234; *Burt v. Union Central Life Ins. Co.* (1902), 187 U. S., 362, 23 Sup. Ct., 139, 47 L. Ed., 216; *Ritter v. Mut. Life Ins. Co.* (1898), 169 U. S., 139, 18 Sup. Ct., 300, 42 L. Ed., 693; *Supreme Commandery v. Ainsworth* (1882), 71 Ala., 436, 46 Am. Rep., 332; *Shipman v. Protected Home Circle* (1903), 174 N. Y., 398, 67 N. E., 83, 63 L. R. A., 347; *Amicable Soc. v. Bolland* (1830), 4 Bligh (N. R.), 194, 2 Dow. & Clark, 1; and many others. Some Courts

A considerable number of the State Courts, however, have adopted the opposite view, and have concluded that, so far as the insurance company is concerned, it ought to pay in all such cases, because, without specifying any such exception as suicide or execution for crime, it has expressly agreed to pay upon the occurrence of "death"; and that, so far as public welfare is concerned, there is no adequate reason for disregarding the terms of the contract, or for depriving innocent persons of the enjoyment of the insurance money as stipulated, and no more cause for inferring forfeiture of insurance, than for requiring attainder, or forfeiture of other property belonging to the insured at the date of his suicide or legal execution.<sup>6</sup>

With respect to the other class of policies, those in which the insurance is made payable to a third party beneficiary by irrevocable appointment, we find expressions in several cases, which would indicate that the same rule of forfeiture must be applied, as in case of the first class of policies, and that a third party beneficiary, also, can recover nothing. The plausible argument here is that, if the protection of the policy does not include wilful suicide, or death for crime, it cannot be construed to cover for such a death in favor of any beneficiary whatsoever, who makes claim under the policy.<sup>7</sup>

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hold that the same result follows if the appointment of a third party beneficiary is revocable; for example, *Davis v. Supreme Council* (1907), 195 Mass., 402, 81 N. E., 294.

<sup>6</sup> *Collins v. Metropolitan Life Ins. Co.* (1908), 232 Ill., 37; *Robson v. United Order* (1904), 93 Minn., 24, 100 N. W., 381; *Lange v. Royal Highlanders* (1907), 75 Neb., 188, 110 N. W., 1110; *Campbell v. Supreme Conclave* (1901), 66 N. J. L., 274, 49 Atl., 550, 54 L. R. A., 576, which contains an admirable review of authorities, and discussion of public policy. Says a Missouri Court: "Self destruction always indicates, if not insanity, at least an irresponsible state of mind, and may well be considered part of the risk assumed if not specially excluded," *Morton v. Supreme Council* (1903), 100 Mo. App., 76, 86. And, influenced apparently by the same conviction, the United States Supreme Court once made the following comment regarding a Pennsylvania decision, "the doctrine of *Borradaile v. Hunter* was adopted with the confessedly unsound addition that suicide would avoid a policy although there were no condition to that effect in the policy", *Insurance Co. v. Terry* (1872), 15 Wall, 580, 586. So also Mr. Cooke says, "If performance by an insurer is, in general terms, conditioned on the death of the insured, there seems no valid reason why death by committing suicide should not be included, and such is the general doctrine", *Cooke Life Ins.*, Sec. 41.

<sup>7</sup> *Mut. Life Ins. Co. v. Kelly* (1902), 114 Fed., 268, 275. Thus the United States Supreme Court says, "It cannot be that one of the risks cov-

But it is of importance to take note that, in no one of these cases in the highest court, were the claims of third party beneficiaries involved. There was no adequate presentation of authorities, and presumably no argument addressed to the Court, in support of the superior rights of innocent appointees. In every instance the insurance was payable to the estate of the insured, and to plaintiffs whose rights were measured by those of the insured. Thus in the Federal case last cited, the Court expressly states, "The question before us, and the only question is: what rights did McCue's estate and children get by this policy", and accordingly, in distinguishing from the Wisconsin case, which was decided in favor of third party beneficiaries,<sup>8</sup> the Court says, "McCue's policy was in favor of his estate, and comes within the concession made by the Supreme Court (of Wisconsin) to the reasoning of the Ritter case."

In the often cited case of *Fauntleroy*,<sup>9</sup> decided by the House of Lords in 1830, the Lord Chancellor, referring to death at the hands of public justice, says, "it is not within the risk of the policy". Nevertheless, with this and other cases before them, the Queen's Bench found no difficulty in granting judgment in favor of a wife, although the insured, her husband, had intentionally killed himself when sane.<sup>10</sup>

Indeed when we come to marshal the many authorities, both cases and text-books, which are directly in point, we find a re-

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erred by a contract of insurance is the crime of the insured. There is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy", *Burt v. Union Cent. Life Ins. Co.*, 187 U. S., 362, 365. And again, "It must be held that the death of the assured, if directly and intentionally caused by himself, when in sound mind, was not a risk intended to be covered, or which could legally have been covered by the policies in suit", *Ritter v. Mut. Life Ins. Co.* (1897), 169 U. S., 139, 160. And again very recently the same court, after quoting from the Burt and Ritter cases, says, "These cases must be accepted as expressing the views of this Court as to the public policy which must determine the validity of insurance policies, and which they cannot transcend even by explicit declarations, much less be held to transcend by omission or implication", *Northwestern Life Ins. Co. v. McCue* (1911), 223 U. S., 234, 246.

<sup>8</sup> *Patterson v. Nat. Premium Ins. Co.*, 100 Wis., 118.

<sup>9</sup> *Amicable Ins. Soc. v. Bolland*, 4 Bligh (N. R.), 174.

<sup>10</sup> *Moore v. Woolsey* (1854), 24 Eng. L. & Eq., 248. The wife was a beneficiary for value, having paid premiums, but if a policy does not "cover" the risk, an assignee for value, no more than a gratuitous assignee can make successful claim.

markable unanimity of opinion in favor of third party beneficiaries, especially if the appointment is irrevocable.<sup>11</sup>

Says the Pennsylvania Court:

"We are clearly of the opinion that the weight of authority is to the effect that, where the policy is silent as to suicide, it will not for such act be avoided as against the wife of deceased, who is the nominated beneficiary."<sup>12</sup>

Says the Supreme Court of Iowa:

"We wish now to add a few words on principle by way of emphasis of a thought already expressed. It is not the wrongdoer who makes claim here, nor any representative whose rights are to be measured by those of the wrongdoer, but persons who acquired an interest at the time the policy was taken out, and who are not in any way responsible for the loss under it."<sup>13</sup>

The modern text writers, all or substantially all, seem to follow the cases just presented, and to announce as established law the doctrine for which they stand.<sup>14</sup>

This striking consensus of authority, as it seems to me, is further reinforced by the weight of reason. It would appear that

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<sup>11</sup> *Fitch v. Am. Popular Life Ins. Co.*, (1875), 59 N. Y., 557, 17 Am. Rep., 372. Since then, at least twice and without dissent, the same Court has reaffirmed the rule, *Darrow v. Family Fund*, 116 N. Y., 537, 22 N. E., 1093, 6 L. R. A., 495, 15 Am. St. Rep., 430; *Shipman v. Home Circle* (1903), 174 N. Y., 398, 67 N. E., 83, 63 L. R. A., 347. To the same effect, *Supreme Council v. Pels* (1903), 110 Ill. App., 409; *Supreme Lodge v. Kutscher* (1897), 72 Ill. App., 463; *Parker v. Des Moines Life Assn.*, (1899), 108 Iowa, 117, 78 N. W., 826; *Mooney v. Ancient Order* (1903), 114 Ky., 950, 72 S. W., 288; *Supreme Conclave v. Miles* (1901), 92 Md., 613, 48 Atl., 845, 84 Am. St. R., 528; *Robson v. United Order* (1904), 93 Minn., 24, 100 N. W., 381; *Kerr v. Minn. Mut. Ben. Assn.* (1888), 39 Minn., 174, 39 N. W., 312, 12 Am. St. R., 631; *Mills v. Rebstock* (1882), 29 Minn., 380, 13 N. W., 162; *Patterson v. Natural Mut. L. Ins. Co.* (1898), 100 Wis., 118, 75 N. W., 980, 42 L. R. A., 253, 69 Am. St. R., 899; and many other cases hereinbefore cited. The only case that I have been able to find holding *contra* is in a lower Court, *Hopkins v. Northwestern Life Ins. Co.* (1899), 94 Fed., 729, affirmed on another ground, 99 Fed., 202.

<sup>12</sup> *Morris v. Life Assur. Co.* (1898), 183 Pa. St., 563, 39 Atl., 52.

<sup>13</sup> *Seiler v. Economic L. Assn.* (1898), 105 Iowa, 87, 74 N. W., 941, 43 L. R. A., 537.

<sup>14</sup> Cooley's Briefs (1905), "the settled rule", p. 3226; Vance (1904), "the clear weight of authority", pp. 516, 517; 3 Joyce (1897), "a general rule", Sec. 2653; Elliott (1902), Sec. 369; 1 May (1900), Sec. 324; Bacon Ben. Soc. & Ins. (1904), Sec. 337; Cooke Life Ins. (1891), Sec. 41; McGil-livray Ins. (London, 1912), pp. 174, 175; Bunyon Life Ins. (London, 1904), pp. 106, 108.

much of the confusion attaching to this subject has resulted from use of the misleading phrase, "the policy does not *cover* suicide or crime." Such a statement is not altogether accurate. If we refer to the unambiguous import of the description, the language of the policies, which we are considering, *does* cover, since all deaths are covered save those specifically excepted, and in many policies there is the additional statement that the policy constitutes the entire contract. The issue might better be defined in these words, "has the particular claimant a right to recover under the policy?" Not only, then, by the terms of the contract has the company agreed to pay, but the company so understands the situation, and by advertisements and oral representations, the country over, constantly points to the liberality of its form of policy, which it describes as substantially incontestable, and thereby attracts to itself immense custom. The insured, if you please, has been won over by such representations. For a long term of years his whole family have felt the pinch and stress involved in keeping up the insurance. In a very real sense, wife and children have contributed to the payment of premiums. They are not only owners for value, but are wholly free of offense. The vesting of their title to the insurance fund antedates the wrongful act perpetrated by another. Why should the Court, as against them, impose a forfeiture, which the contract itself does not demand, and thus deprive them of their means of support, and possibly force them into the poorhouse? Unless compelled by some urgent consideration of public policy, the Court cannot create an implied condition which is at variance with the express terms of a contract. What then is the imperative consideration of public policy, that is to work such apparent hardship, laying such a grievous penalty on the innocent, and bringing such extraordinary and unexpected profit to the insurers? Is it that otherwise the insured may be encouraged to commit suicide and crime? That same argument may be urged against the universally accepted laws of inheritance. And as to crime, is not the argument too far-fetched to be taken seriously? Might we not about as well contend that it is against public policy to encourage insurers to secure the unjust conviction of innocent suspects? Does anyone suppose that the wrongdoer committed crime with an intent to hasten his own death? Did he not fight for his life in the criminal court, to the limit of his means and ability? He did not kill himself, nor had he any thought of his insurance when he

was drawn into sin. The State killed him. Why should the State consider the continuance of his life as a thing so valuable, and the welfare of his suffering family as a thing to be held so cheap?

The important institution in this country, known as "life insurance", is, in some respects, akin to a huge charitable fund, established mainly for the benefit of unfortunate wives and children. Suppose such an eleemosynary institution has been founded by private charity and for such a worthy purpose. Must the Courts adjudge the foundation void, so far as it opens its doors to the innocent and needy wives and children of those who have committed suicide, or who have died in the electric chair? Such a ruling would be brutal and unchristian in the extreme. Our thought instinctively revolts against it. But life insurance is not a pure charity. To the life insurance fund, very often, wives and children have made large contribution in money, toil and sacrifice. Their title to the fund became vested prior to the commission of the crime. What difference should it make, whether the insured was killed by his own act, or by the act of some stranger or by accident?

It must not be forgotten, in this connection, that policies of life insurance are often utilized in the market as a means of procuring loans of money. If the rights of an assignee for value are likely to be cut off by events over which he has no control, the commercial value of the instrument will be seriously impaired.

The age is progressive. Courts are striving to get into close touch with the life and needs of the common people. This interesting issue as to third party beneficiaries, with vested rights, has never been passed upon by the United States Supreme Court, and when, in the future, that high Court of Justice shall have occasion to decide it, I venture to express a doubt as to whether the dictum of Mr. Justice Hunt in the Terry case may not be preferred to the dictum of Mr. Justice McKenna in the recent case of McCue.

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